IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 138 OF 2004

Dilip Baburao Balwadkar & ors. ... Appellants

V/s

Jaywant Kashinath @ Kashiram Balwadkar ... Respondents

Mr. Ajit S. Karwande for the appellants.

Mr. S.A. Bhagwat for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 13TH JUNE, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Third Ad-hoc District Judge, Pune, dismissing the appeal as well as the cross-objection and confirming the order passed by the 4th Joint Civil Judge, Jr.Divn., Pune on 13.1.1996 dismissing the R.C.S. No. 619 of 1996.

2. The suits basically were filed for partition and separate possession of ancestral property by the plaintiffs. In fact, both the suits practically being for the same purpose, therefore, both the suits were

tried and adjudicated simultaneously. The basic issues involved in the suits was, whether the plaintiff had succeeded in establishing that the properties involved were joint family properties or not.

3. The learned Trial Judge adjudicated the dispute on merits holdings that the plaintiff has succeeded in establishing that the plaintiff was owner of the joint family properties and were purchased by the joint family and decreed the suit.

The appeal was carried to the District Court. The learned Addl. District Judge, after hearing both sides, came to the conclusion on the basis of available evidence, that the finding recorded by the learned Trial judge was legal and proper and, therefore, properties described in R.C.S. No. 619 of 1996 were proved to be ancestral properties at the hands of Kashinath and Baburao. The appeal came to be dismissed and hence the present appeal is filed.

4. The learned counsel for the appellants sought to rely upon the fact that, by virtue of Sec.32-G of the B.T. & A.L. Act the land was mutated in his own name and, therefore, the lands would be said to be ancestral

properties for which purpose the so-called question of law was sought to be raised to the effect that, whether both the Courts below acted illegaly disregarding the settled principles of cannons of ancestral property and self acquired property. It was submitted that late Baburao, ancestor of the plaintiff, purchased the property from his own funds and, therefore, only after his death the said property was transferred in the name of the plaintiff as his self-acquired property and this fact was not considered by the lower appellate Court. However, on perusal of the judgment of the lower appellate Court, it is found that the issues involved are properly adjudicated on the basis of available evidence and seen to be properly appreciated by the lower appellate Court while coming to the conclusion that the suit properties are the ancestral properties at the hands of Kashinath and Baburao. Therefore, it is obvious that, both the Courts below have recorded the concurrent findings to the effect that properties were ancestral at the hands of Kashinath and Baburao.

5. In this regard, it must be noted that, time and again, the Apex Court has held that the concurrent findings of facts, howsoever erroneous, cannot be disturbed by the High Court in exercise of the powers

under Sec. 100 of the C.P.C. It must also be noted that the substantial question of law has to be distinguished from the substantial question of facts. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at by the last Court of fact, being the first appellate Court. In the present case, therefore, it is found that, both the Courts below have properly appreciated the issues of facts as well as law and, therefore, in my considered view, no interference is necessary by this Court in second appeal.

6. In the result, the appeal must fail and stands dismissed.

(P.V. Kakade, J.)